

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

CLERK'S OFFICE U.S. DIST. COURT  
AT ROANOKE, VA  
FILED

NOV 30 2009

JOHN F. GORCORAN, CLERK  
BY:   
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BRIAN ERIC MILLER,  
Petitioner,  
v.  
WARDEN AT COLD SPRINGS  
CORRECTIONS,  
Respondent. )  
Case No. 7:09CV00438  
FINAL ORDER  
By: Glen E. Conrad  
United States District Judge

In accordance with the accompanying memorandum opinion, it is hereby

## **ORDERED**

that the petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, is **DISMISSED** as untimely filed, and this action is stricken from the active docket of the court. Based upon the court's finding that the defendant has not made the requisite showing of denial of a substantial right, a certificate of appealability is **DENIED**.

ENTER: This 30<sup>th</sup> day of NOVEMBER, 2009.

Grace Conrad  
United States District Judge